

³ The Board notes that, following the November 23, 2020 decision, OWCP received additional evidence. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

ISSUE

The issue is whether OWCP properly denied appellant's request for reconsideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

FACTUAL HISTORY

On November 2, 2006 appellant, then a 40-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that on November 1, 2006 she fractured her right foot when she slipped and twisted it while stepping on the vehicle running board in the performance of duty. She stopped work on November 2, 2006. OWCP accepted the claim for right metacarpal bone fracture and right plantar fibromatosis. It paid appellant compensation on the supplemental rolls commencing December 18, 2006. Appellant subsequently accepted a modified job offer as a carrier technician on March 13, 2007 and returned to work on March 16, 2007. OWCP paid her wage-loss compensation on the periodic rolls, effective June 7, 2009, after the employing establishment advised it was no longer able to provide a modified job within her work restrictions.⁴

On April 22, 2019 OWCP referred appellant, a statement of accepted facts (SOAF), and a series of questions to Dr. Michael J. Einbund, a Board-certified orthopedic surgeon, for a second opinion evaluation to determine the status of her accepted conditions, the extent of any disability, and appropriate treatment. In a May 10, 2019 report, Dr. Einbund provided physical examination findings and noted that appellant's accepted conditions were closed right metacarpal bone fracture and right plantar fibromatosis, which had resolved. He explained that he found no evidence of any active plantar fibromatosis on examination and that appellant's fracture had healed without residuals.

In a June 11, 2019 report, Dr. Todd Fellars, a Board-certified orthopedic surgeon and OWCP district medical adviser (DMA), reviewed the medical evidence including Dr. Einbund's May 10, 2019 report. He agreed with Dr. Einbund's opinion that appellant's accepted closed right metacarpal bone fracture had healed without any residuals and there was no evidence of right plantar fibromatosis.

On June 24, 2019 OWCP advised appellant of its notice of proposed termination of her wage-loss compensation and medical benefits as she no longer had disability or residuals due to her accepted November 1, 2006 employment injury.

In an attending physician's supplemental report dated July 5, 2019, Dr. Julie Margaret Fuller, a Board-certified internist, provided examination findings and noted permanent work restrictions. She diagnosed complex regional pain syndrome type 1, right plantar fasciitis, right metatarsal fracture sequela, and tingling sensation due to sinus tarsi syndrome. Dr. Fuller reviewed Dr. Einbund's opinion and noted her disagreement that the accepted right ankle and foot conditions had resolved without residuals or disability. She reported that appellant continued to have symptoms of her November 1, 2006 work injury and required permanent work restrictions.

By decision dated July 26, 2019, OWCP terminated appellant's wage-loss compensation and medical benefits effective that date. It found that the opinion of Dr. Einbund, the second

⁴ By decision dated July 28, 2010, OWCP granted appellant a schedule award for four percent permanent impairment of the right lower extremity. The schedule award ran from October 15, 2008 through January 3, 2009.

opinion physician who represented the weight of the evidence and established that she no longer had disability or residuals due to her accepted employment injury.

On August 8, 2019 appellant requested reconsideration.

By decision dated November 6, 2019, OWCP denied modification of its July 26, 2019 termination decision.

On April 22, 2020 appellant requested reconsideration. She argued that Dr. Einbund provided contradictory statements and, thus, his opinion was insufficient to establish that she no longer had any residuals or disability due to her accepted employment injury.

By decision dated May 7, 2020, OWCP denied appellant's request for reconsideration.

OWCP subsequently received letters dated July 20, August 3, September 14 and 28, 2020, wherein the Social Security Administration (SSA) requested that OWCP provide copies of appellant's medical records as she had filed an application for disability benefits.

On November 6, 2020 appellant requested reconsideration.

By decision dated November 23, 2020, OWCP denied appellant's request for reconsideration.

LEGAL PRECEDENT

Section 8128(a) of FECA⁵ vests OWCP with discretionary authority to determine whether to review an award for or against compensation. The Secretary of Labor may review an award for or against compensation at any time on his own motion or on application.⁶

To require OWCP to reopen a case for merit review pursuant to FECA, the claimant must provide evidence or an argument which: (1) shows that OWCP erroneously applied or interpreted a specific point of law; (2) advances a relevant legal argument not previously considered by OWCP; or (3) constitutes relevant and pertinent new evidence not previously considered by OWCP.⁷

⁵ 5 U.S.C. § 8128(a).

⁶ *Id.*; see *A.A.*, Docket No. 20-1564 (issued August 30, 2021); *J.C.*, Docket No. 20-0614 (issued February 10, 2021); *L.D.*, Docket No. 18-1468 (issued February 11, 2019); see also *V.P.*, Docket No. 17-1287 (issued October 10, 2017); *W.C.*, 59 ECAB 372 (2008).

⁷ 20 C.F.R. § 10.606(b)(3); see *A.A.*, *id.*; *L.D.*, *id.*; see also *L.G.*, Docket No. 09-1517 (issued March 3, 2010); *C.N.*, Docket No. 08-1569 (issued December 9, 2008).

A request for reconsideration must be received by OWCP within one year of the date of OWCP's decision for which review is sought.⁸ If it chooses to grant reconsideration, it reopens and reviews the case on its merits.⁹ If the request is timely, but fails to meet at least one of the requirements for reconsideration, OWCP will deny the request for reconsideration without reopening the case for review on the merits.¹⁰

ANALYSIS

The Board finds that OWCP properly denied appellant's request for reconsideration of the merits of his claim pursuant to 5 U.S.C. § 8128(a).

In her timely request for reconsideration, appellant did not establish that OWCP erroneously applied or interpreted a specific point of law, or advance a relevant legal argument not previously considered by OWCP. Consequently, she is not entitled to review of the merits of her claim based on the first and second above-noted requirements under 20 C.F.R. § 10.606(b)(3).¹¹

Additionally, appellant has not submitted relevant and pertinent new evidence not previously considered by OWCP. Following the issuance of the May 7, 2020 decision, OWCP received letters from SSA requesting copies of appellant's medical records as she had filed for disability benefits. This evidence, however, is irrelevant as it is not medical evidence. The Board has held that the submission of evidence that does not address the underlying issue involved does not constitute a basis for reopening a case.¹² As appellant did not provide relevant and pertinent new evidence, she is not entitled to a merit review based on the third requirement under 20 C.F.R. § 10.606(b)(3).¹³

The Board, accordingly, finds that appellant did not meet any of the requirements of 20 C.F.R. § 10.606(b)(3). Pursuant to 20 C.F.R. § 10.608, OWCP properly denied merit review.¹⁴

⁸ *Id.* at § 10.607(a). The one-year period begins on the next day after the date of the original contested decision. For merit decisions issued on or after August 29, 2011, a request for reconsideration must be received by OWCP within one year of the merit decision for which review is sought. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4 (February 2016). Timeliness is determined by the document receipt date of the request for reconsideration as indicated by the received date in the Integrated Federal Employees' Compensation System (iFECS). *Id.* at Chapter 2.1602.4(b).

⁹ *Id.* at § 10.608(a); *see F.V.*, Docket No. 18-0230 (issued May 8, 2020); *M.S.*, 59 ECAB 231 (2007).

¹⁰ *Id.* at § 10.608(b) *see B.S.*, Docket No. 20-0761 (issued January 29, 2021); *E.R.*, Docket No. 09-1655 (issued March 18, 2010).

¹¹ *F.R.*, Docket No. 20-1406 (issued March 2, 2021); *M.O.*, Docket No. 19-1677 (issued February 25, 2020); *E.W.*, Docket No. 19-1393 (issued January 29, 2020); *C.B.*, Docket No. 18-1108 (issued January 22, 2019).

¹² *E.J.*, Docket No. 20-0841 (issued February 12, 2021); *T.T.*, Docket No. 19-1624 (issued October 28, 2020); *Edward Matthew Diekemper*, 31 ECAB 224 (1979).

¹³ *See R.E.*, Docket No. 21-0172 (issued June 15, 2021); *T.W.*, Docket No. 18-0821 (issued January 13, 2020).

¹⁴ *See R.E., id.*; *J.B.*, Docket No. 20-0145 (issued September 8, 2020).

CONCLUSION

The Board finds that OWCP properly denied appellant's request for reconsideration of the merits of his claim pursuant to 5 U.S.C. § 8128(a).

ORDER

IT IS HEREBY ORDERED THAT the November 23, 2020 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 12, 2022
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board